

June 13, 2006

Mary Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station, 2nd floor  
Boston, MA 02110

Re: **Bay State Gas Company, D.T.E. 06-42**

Dear Ms. Cottrell:

On April 28, 2006, Bay State Gas Company ("Bay State" or "Company") filed a proposal ("Proposal") with the Department of Telecommunications and Energy ("Department") for approval of a long-term storage agreement with Washington 10 Storage Corporation ("Washington 10") and long-term transportation agreements for firm service with Vector Pipeline L.P. and Vector Pipeline Limited Partnership (collectively, "Vector"). The Attorney General intervened on May 24, 2006 and the Department held a public and evidentiary hearing on May 31, 2006. Pursuant to the procedural schedule established by the hearing officer, the Attorney General submits this letter as his Initial Brief.

## **I. STANDARD OF REVIEW**

The Department applies a "public interest" standard of review to evaluate a gas utility's options for acquiring commodity resources and capacity under M.G.L. c. 164, § 94A. *Bay State Gas Company*, D.T.E. 98-79, at 1-2 (1998); *Commonwealth Gas Company*, D.P.U. 94-174A at 27 (1996); *KeySpan Energy Delivery New England*, D.T.E. 04-9 at 10, 19-20 (2004). The Company must show that:

[t]he acquisition (1) is consistent with the company's portfolio objectives, and (2) compares favorably to the range of alternative options reasonably available to the company and its customers, including releasing capacity to customers migrating to transportation. In establishing that a resource is consistent with a company's portfolio objectives, the company may refer to the portfolio objectives established in a recently approved resource plan or in a recent review of its supply contracts under Section 94A, or may describe its objectives in the filing accompanying the resource proposal.

D.T.E. 98-79, at 1-2. The Department has jurisdiction to review the Washington 10 and Vector Agreements under M.G.L. c. 164, § 94A, because they cover a period longer than one year.

## II. ARGUMENT

### A. Bay State Gas Company Should Not Make Resource Acquisition Decisions Without a Valid Long-Range Forecast. The Department Should Require the Company to Immediately Submit a Long-Range Forecast Pursuant to M.G.L. c. 164, § 69I

The Department, in the context of numerous long-range forecast proceedings, has recognized that a long-range forecast should provide a sound basis for resource planning decisions. *Colonial Gas Company*, D.P.U. 96-18, at 4 (1996); *Bay State Gas Company*, D.P.U. 93-129, at 5 (1996); *Holyoke Gas and Electric Department*, D.P.U. 93-191, at 2 (1996); *Berkshire Gas Company*, 16 DOMSC 53, at 56 (1987) (“1987 Berkshire Gas Decision”).

Bay State’s long-range forecast does not provide a sound basis for the Company’s decision to acquire current the Washington 10 and Vector resources because that long-range forecast violates the two-year statutory filing requirement set out in M.G.L. c. 164, § 69I. *See Attorney General Initial Brief*, D.T.E. 06-7, at 5-7; *Attorney General Reply Brief*, D.T.E. 06-7, at 2-3. According to M.G.L. c. 164, § 69I:

Every gas company . . . shall file with the department a long-range forecast with respect to the gas requirements of its market area . . .  
Such forecast shall be filed at least every two years.

The mandatory language of the statute supports the conclusion that the Company must file every other calendar year. The statute plainly states that “[f]orecasts shall be filed at least every two years.” The word “shall” indicates that the filing requirement is not optional, but an absolute requirement.<sup>1</sup> The phrase “at least every two years” indicates that the Company, and all other gas companies, must file a long-range forecast every second calendar year after filing its forecast, or sooner, but not later. The statute contains no exceptions for pending motions or appeals of Department orders.<sup>2</sup> M.G.L. c. 164 § 69I. Bay State filed its long-range forecast on November

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<sup>1</sup> Cf. *Swift v. Registrars of Voters of Quincy*, 281 Mass. 271, 276 (1932) citing *Cheney v. Coughlin*, 201 Mass. 204, 87 N. E. 744; *Rea v. Board of Aldermen of Everett*, 217 Mass. 427, 430, 105 N. E. 618. “The word ‘shall’ as used in statutes, although in its common meaning mandatory, is not of inflexible signification and not infrequently is construed as permissive or directory in order to effectuate a legislative purpose.” *Id.*

<sup>2</sup> The statute states that “[t]he department is authorized to exempt any electric or gas company from any or all provisions of this section upon a determination by the department and the siting board, after notice and hearing, that an alternative process is in the public interest.” M.G.L. c.

15, 2002, approximately three-and-a-half-years ago, *Bay State Gas Company*, D.T.E. 02-75 (2002), at 1, and has yet to submit an update even though the Company should have submitted a new long-range forecast on or before November 15, 2004 to comply with the statute.

Bay State claimed that it used the planning process set out in its long-range forecast to select Washington 10 and Vector resources over other alternatives. Exhibit BSG-1 at 4, lines 15-22. The Company set out that process at least four years ago and, according to M.G.L. c. 164, § 69I, it should have submitted an updated long-range forecast that contained any updates to its planning process two years ago in 2004.<sup>3</sup> The Company did not update its forecast, and, therefore, apparently assumed the validity of its planning process when it decided to rely on it to select Washington 10 and Vector resources. If the Company updated the planning process, then it has not provided any explanation of changes of the process in its Proposal.

Further, Bay State made its initial decision to acquire additional storage capacity in the absence of a long-range forecast that complies with the statutory two-year filing requirement. Exhibit BSG at 1, 6-7. The Company's 2002 long-range forecast fails to contemplate or analyze the expansion of Bay State's storage resources, and because it is outdated, it is unlikely that it would include such an analysis. The Company analyzed the need to add storage resources in the summer of 2005, well after it developed the long-range forecast in 2002. Exhibit BSG-1. The Company should have analyzed the need for storage resources in the context of a long-range forecast in 2004. In some cases, a company may have to analyze resource needs outside of the forecast, but the Department should only allow a Company leeway in analysis of resource needs when a company can show that it has complied with the two-year statutory requirement in M.G.L. c. 164, § 69I.

### **III. CONCLUSION**

In order to promote sound resource decisions, the Department should compel Bay State and other gas companies to continue to update long-range forecasts every two years after the initial filings of their forecast in accordance with M.G.L. c. 164, § 69I. Up-to-date long-range forecasts help ensure that gas companies make resource planning decisions on long-range forecast.

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164 § 69I. It does not appear that the Department has done so in this case.

<sup>3</sup> If the Department has not conducted a rigorous review of the forecasts and planning methods used by the Company pursuant to M.G.L. c. 164, § 69I, it cannot ascertain whether the forecasts and planning methods meet the criteria set out in the statute.

Respectfully submitted,

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Dated: June 13, 2006

cc: John Geary, Hearing Officer  
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Robert Dewees, Esq.